

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CLAIRE J. KAY and CLAYMORE  
CONSTRUCTION CO.,

Case No. 09-11887

Plaintiffs/Counter-Defendants,

Honorable John Corbett O'Meara

v.

UNITED OF OMAHA LIFE INSURANCE  
COMPANY d/b/a MUTUAL OF OMAHA  
INSURANCE COMPANY,

Defendants,

And

FLAGSTAR BANK,

Intervening Defendant/Counter-Plaintiff.

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**ORDER REGARDING PROPOSED JUDGMENT**

This matter came before the court on Plaintiffs' May 18, 2012 proposed judgment submitted to the court following a jury verdict rendered in Plaintiffs' favor. Defendant United of Omaha Life Insurance Company filed objections to Plaintiffs' proposed judgment May 23, 2012; and Plaintiffs filed a response to the objections June 1, 2012.

Defendant objects to the award of interest pursuant to Mich. Comp. Laws Ann. § 500.2006(4), arguing that Plaintiffs are not entitled to 12% interest provided by the statute. Defendant claims the interest is "not available if the 'claim is reasonably in dispute.'" Defendant's br. at 2. However, the Michigan Court of Appeals has held that a first-party insured is entitled to 12% penalty interest if a claim is not timely paid by the insurer, regardless of whether the claim was reasonably in dispute.

Griswold Properties, L.L.C. v. Lexington Ins. Co., 276 Mich. App. 551 (2007). Therefore, Plaintiffs are entitled to the 12% penalty interest.

Although Defendant complains about paying costs and attorney fees in the amount of nearly \$350,000.00, the court has awarded those fees. A substantial amount of legal work was incurred in this case, including a jury trial; and the court finds that the award is appropriate.

A judgment will be entered separately.

s/John Corbett O'Meara  
United States District Judge

Date: July 26, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, July 26, 2012, using the ECF system.

s/William Barkholz  
Case Manager